

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13617

Non-Argument Calendar

WALTER PETTAWAY,
as Administrator of the Estate of
Joseph Lee Pettaway, deceased,

Plaintiff-Appellant,

versus

ERNEST N. FINLEY, JR., et al.,
Police Chief of the City of Montgomery, in his
official and individual capacities,

Defendants,

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NICHOLAS D. BARBER,
ERNEST N. FINLEY,
THE CITY OF MONTGOMERY, ALABAMA,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:19-cv-00008-ECM-JTA

Before NEWSOM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

Walter Pettaway appeals from the district court's January 31, 2023 order granting in part the defendant's motion for summary judgment. The district court's order was not final and appealable, however, because it did not end the litigation on the merits. *See* 28 U.S.C. § 1291; *Acheron Cap., Ltd. v. Mukamal*, 22 F.4th 979, 986 (11th Cir. 2022) (stating that an appealable final order ends the litigation on the merits and leaves nothing for the court to do but execute its judgment). Pettaway's excessive force claim against defendant Nicholas Barber remains pending in this action, as the district court has not resolved it and the parties have moved to dismiss Barber's pending interlocutory appeal regarding that claim. *See Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244,

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1246 (11th Cir. 2012) (holding that an order that disposes of fewer than all claims against all parties to a civil action is not final or immediately appealable absent certification by the district court pursuant to Federal Rule of Civil Procedure 54(b)).

Accordingly, this appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. No petition for rehearing may be filed unless it complies with the timing and other requirements of 11th Cir. R. 40-3 and all other applicable rules.